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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

PETER CRUZ,

Real Party in Interest.

E047435

(Super.Ct.No. RIC463349)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. James T. Warren,  
Judge. Petition granted.

Rod Pacheco, District Attorney, and Matt Reilly, Deputy District Attorney, for  
Petitioner.

No appearance for Respondent.

Gary Windom, Public Defender, and William A. Meronek, Deputy Public Defender, for Real Party in Interest.

In this matter we have reviewed the petition and the opposition thereto that we conclude adequately address the issues raised by the petition. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a alternative writ would cause undue delay in resolving this action. We therefore issue a peremptory writ in the first instance. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178-179; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223, disapproved on another ground in *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 724, fn. 4.)

The People seek a writ of mandate directing the trial court to vacate its order dismissing a commitment petition filed pursuant to the Sexually Violent Predator Act (SVP Act). (Welf. & Inst. Code, § 6600 et seq.)<sup>1</sup> We grant the petition, finding that real party in interest was not in lawful custody at the time the petition was filed, but that this was the result of a good faith mistake of fact and/or law.

### FACTS

Real party in interest Cruz pleaded guilty to kidnapping and committing a lewd act on a child under the age of 14 using force or fear. As part of plea negotiations, charges of kidnapping and molesting two other children were dismissed. Cruz was sentenced to 10

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

years eight months in state prison. His initial release date was scheduled for November 16, 2006.

On November 14, 2006, the Board of Parole Hearings (Board) imposed a three-day hold on his release.

Three working days later, on November 21, 2006, the Board lifted the three-day hold and imposed a 45-day hold. This hold was calculated to be effective from November 21, 2006, to January 5, 2007, which was 45 days from November 21, 2006, but 50 days from his initial release date of November 16, 2006.

On January 3, 2007, the Riverside County District Attorney's Office filed a petition to commit Cruz as a sexually violent predator (SVP) pursuant to section 6600 et seq.

A probable cause hearing was held on March 16, 2007, and the court found probable cause to believe that Cruz is a SVP.

On October 29, 2008, Cruz moved to dismiss the proceedings on the ground that he was not in lawful custody on the date that the petition was filed because he could be held a maximum of 45 days beyond the initial release date. He asserts that the California Department of Corrections and Rehabilitation (CDCR) improperly "stacked" the three-day hold upon the statutory 45-day hold.

Cruz further complained that CDCR did not begin the evaluation process for SVP consideration within the proper time<sup>2</sup> despite awareness that Jessica's law<sup>3</sup> might pass making inmates with only one qualifying conviction eligible for SVP classification and that is the only reason for placing the holds. He concludes that this shows CDCR's knowledge and lack of mistake; "it shows simple negligence."

The People argued in opposition that Cruz was in lawful custody because CDCR extended his custody first by imposing a three-day hold pursuant to Code of Civil Regulations, title 15, section 2600.1, subdivision (b), and then by imposing a 45-day hold as provided by subdivision (c) of that regulation and by Welfare and Institutions Code section 6601.3. The People contended in the alternative that if Cruz was not in lawful custody, it was the result of a good faith mistake of fact or law.

At the hearing on the motion to dismiss, the People called Raquel Fassnacht to testify as to the good faith mistake issue. She is employed as a deputy commissioner for the Board and it was her job to conduct probable cause hearings and place 45-day holds. She was taught in her training that a three-day temporary hold could be placed on an inmate when there was not enough information to place a 45-day hold. She was also taught that a 45-day hold could be placed on an inmate as well as a three-day hold. It was not until December 2006 or January 2007 that she was advised by CDCR's legal

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<sup>2</sup> The prison must generally refer a person for a mental health evaluation at least six months prior to the scheduled release date. (§ 6601, subd. (a)(1).)

<sup>3</sup> The SVP Act was amended in several respects by Proposition 83, known as The Sexual Predator Punishment and Control Act or Jessica's law, a voter initiative enacted on November 7, 2006.

department that three-day and 45-day holds could not both be imposed. The regulations were changed in April 2007 to reflect this.

Up until this time, Fassnacht understood the holds could be stacked. She also understood that they had to use the term “rescind” to remove the three-day hold before placing the 45-day hold but that the 45-day hold started from the end of the three-day hold.

The trial court was not concerned with the failure to begin the evaluation process six months before Cruz’s scheduled release date because the criteria changed during that six months because of Jessica’s law.

The court also commented that someone at CDCR determined that they needed to remove the three-day hold and just place the 45-day hold but no one bothered to tell whoever was calculating the time limits about this. In this case, it was determined that the petition had to be filed by January 5, 2007; it was filed on January 3, 2007, presumably within the time period. Initially, the court found that there had been a mistake due to the confusion and denied the petition.

The trial court continued to ponder the problem, and on its own initiative it ordered the matter back on calendar. It then concluded because the CDCR noted that the three-day hold was removed, it was wiped out and the 45-day hold was calculated from the initial release date. It found that CDCR did this in order to comply with the law that the holds could not be stacked. The court reversed its prior ruling and dismissed the petition.

## DISCUSSION

The SVP Act applies to a defendant who is in custody at the time the petition is filed. (§ 6601, subd. (a)(1).) The CSDR is generally required to start the process of screening a defendant for the likelihood of being a SVP at least six months before the anticipated release date. (§ 6601, subd. (a)(1).) If CSDR determines the defendant is a likely SVP, the defendant is referred to the Department of Mental Health for a full evaluation. (§ 6601, subd. (b).)

A defendant's period of custody may be extended for 45 days beyond his scheduled release date on a showing of good cause in order to conduct a full evaluation for SVP purposes. (§ 6601.3.)

The fact that a defendant was not legally in custody when an SVP petition was filed does not in and of itself require dismissal of the petition. The SVP Act states a petition "shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law." (§ 6601, subd. (a)(2).) "Thus, the Legislature has made it absolutely clear that . . . lawful custody [is not] a jurisdictional prerequisite to filing an SVP petition; a later judicial or administrative proceeding determination the custody was unlawful does not deprive the court of the power to proceed on an SVP petition if the custody status when the petition was filed was a result of a good faith mistake of law or fact." (*People v. Wakefield* (2000) 81 Cal.App.4th 893, 898.)

A mistake of law is a mistake occurring when a person knows the facts as they are really but has a mistaken belief as to the legal consequence of those facts. Not every mistake is excusable, but an honest mistake is excusable, the determining reasonableness of the misconception. (*Powell v. City of Long Beach* (1985) 172 Cal.App.3d 105, 109.) While determination of a good faith mistake is an evidentiary matter, the only evidence on the issue is Fassnacht's testimony. Based on that testimony, which was not disputed, it clearly appears that the late filing of the petition was not due to negligence or intentional wrong doing, but a good faith mistake. (*People v. Hubbart* (2001) 88 Cal.App.4th 1202, 1228-1229.) The trial court concluded that since the three-day hold was "removed" or "rescinded" then the 45-day hold had to be calculated from the initial release date of November 16, 2006, but there is no evidence that CDCR employees charged with applying the statutes and regulations in SVP cases believed that the 45-day hold had to be backdated. Nor is there any reason to conclude that they should have anticipated the trial court's legalistic interpretation of the CDCR's use of the words "remove" or "rescind."

Moreover, the trial court itself suggested that a good faith mistake of fact existed in this case as well. Apparently, the district attorney's office was advised that the SVP petition had to be filed by January 5, 2007. Even if Fassnacht or another employee had realized that the "removal" of the three-day hold required an earlier filing date, this was never communicated to whoever was calculating the time limits or to the district attorney.

DISPOSITION

Let a peremptory writ of mandate issue to the Superior Court of Riverside County directing it to set aside its order dismissing the commitment petition and to issue a new order denying real party in interest's motion to dismiss.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.